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FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463  
FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR 6597

DATE COMPLAINT FILED: June 21, 2012

LAST RESPONSE RECEIVED: No response

DATE ACTIVATED: October 3, 2012

EXPIRATION OF SOL:

9/1/2000 (earliest) (estimated)<sup>1</sup>

9/1/2016 (latest)

Pre-MUR 534

DATE RECEIVED: April 2, 2012

DATE ACTIVATED: October 3, 2012

EXPIRATION OF SOL:

9/1/2000 (earliest) (estimated)

9/1/2016 (latest)

Pre-MUR 537

DATE RECEIVED: May 14, 2012

DATE ACTIVATED: October 3, 2012

EXPIRATION OF SOL:

10/3/2013 (earliest) (estimated)

9/1/2016 (latest)

<sup>1</sup> Although Durkee's tenure as treasurer of Feinstein for Senate and the Committee to Re-Elect Loretta Sanchez dates back to the 1990s, this report uses the Department of Justice's earliest date of Kinde Durkee's illegal activities, September 1, 2000, as the earliest date of the expiration of the statute of limitation ("SOL"). For each of the other three matters addressed in this report (RRs 12L-28, 12L-29, and 12L-43, relating to the Committee to Re-Elect Linda Sanchez, Susan Davis for Congress, and Fund for the Majority), the report uses as the earliest SOL expiration date, five years from the date Durkee first filed a report on behalf of the particular committee. We use the day before Durkee's arrest, September 2, 2011, as the latest date for expiration of the statute of limitations.

Pre-MUR 538  
DATE RECEIVED: May 17, 2012  
DATE ACTIVATED: October 3, 2012  
  
EXPIRATION OF SOL:  
1/30/2008 (earliest) (estimated)  
9/1/2016 (latest)

Pre-MUR 539  
DATE RECEIVED: May 17, 2012  
DATE ACTIVATED: October 3, 2012  
  
EXPIRATION OF SOL:  
9/1/2000 (earliest) (estimated)  
9/1/2016 (latest)

RAD REFERRAL 12L-18  
DATE RECEIVED: April 17, 2012  
DATE ACTIVATED: October 3, 2012  
  
EXPIRATION OF SOL:  
9/1/2000 (earliest) (estimated)  
9/1/2016 (latest)

RAD REFERRAL 12L-28  
DATE RECEIVED: July 11, 2012  
DATE ACTIVATED: October 3, 2012  
  
EXPIRATION OF SOL:  
1/30/2008 (earliest) (estimated)  
9/1/2016 (latest)

RAD REFERRAL 12L-29  
DATE RECEIVED: July 11, 2012  
DATE ACTIVATED: October 3, 2012  
  
EXPIRATION OF SOL:  
10/3/2013 (earliest) (estimated)  
9/1/2016 (latest)

CONFIDENTIAL

RAD REFERRAL 12L-30  
DATE RECEIVED: July 11, 2012  
DATE ACTIVATED: October 3, 2012

EXPIRATION OF SOL:  
9/1/2000 (earliest) (estimated)  
9/1/2016 (latest)

RAD REFERRAL 12L-43  
DATE RECEIVED: July 11, 2012  
DATE ACTIVATED: October 3, 2012

EXPIRATION OF SOL:  
7/13/2012 (earliest) (estimated)  
9/1/2016 (latest)

**SOURCES:**

Internally Generated

Complaint filed by William Wardlaw, treasurer for  
Feinstein for Senate

**RESPONDENTS:**

Kinde Durkee  
Durkee & Associates LLC

**RELEVANT STATUTES:**

2 U.S.C. § 432(b)(3), (c)  
2 U.S.C. § 434(b)  
2 U.S.C. § 439a

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

**I. INTRODUCTION**

This matter concerns numerous violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), resulting from an embezzlement scheme Kinde Durkee engaged in over the course of ten years while serving as treasurer for hundreds of state and federal political committees. Ultimately, Durkee misappropriated in excess of \$7 million from many of those committees and omitted the unauthorized transactions from disclosure reports filed with the Commission, resulting in substantial misstatements of the committees' federal activity.

The Reports Analysis Division ("RAD") has referred a total of 53 committees to the Office of General Counsel ("OGC") for possible enforcement action resulting from the embezzlement scheme. Five such committees have filed *sua sponte* submissions with OGC concerning Durkee's misconduct, one committee is also the subject of an Audit Referral, and OGC has also received a complaint alleging that Durkee violated the Act and Commission regulations as a result of her unauthorized misappropriation and misreporting of committee funds.

This report, one of four addressing this series of related matters, focuses solely on Durkee's personal liability for her many admitted violations of campaign finance laws. In it, we recommend that the Commission find reason to believe she violated the Act and enter into pre-probable cause conciliation with her, suggesting a significant proposed civil penalty.

The other three reports make distinct recommendations concerning the groups of committees addressed in each.

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19 As noted above, this report addresses only Durkee's personal liability for her violations

20 of the Act and Commission regulations. On March 30, 2012, Durkee pleaded guilty to five

21 counts of mail fraud and was subsequently ordered to pay restitution to multiple political

1 committees that sustained losses from her embezzlement.<sup>2</sup> Although describing a scheme that  
2 affected hundreds of state and federal committees, the facts detailed in the criminal matter  
3 centered on Durkee's fraudulent activities involving the accounts of the five federal political  
4 committees discussed in this report: that is, Susan Davis for Congress ("Davis Committee");  
5 the Committee to Re-Elect Linda Sanchez ("Linda Sanchez Committee"); the Committee to Re-  
6 Elect Loretta Sanchez ("Loretta Sanchez Committee"); Feinstein for Senate ("Feinstein  
7 Committee"); and Fund for the Majority, Senator Diane Feinstein's leadership PAC  
8 (collectively, the "Committees").  
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13 As discussed at greater length below, the Complaint,  
14 and the pleadings filed in Durkee's criminal prosecution provide compelling  
15 evidence that Durkee violated the commingling, recordkeeping, reporting, and personal use  
16 provisions of the Act and Commission regulations. Because those records further sufficiently  
17 identify the reach of Durkee's scheme,

18 We therefore recommend that the Commission find reason to  
19 believe that Durkee violated the Act, and enter into pre-probable cause conciliation with her.

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<sup>2</sup> See generally *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. 2012).



1     **II.     FACTUAL BACKGROUND**

2             **A.     Kinde Durkee's Illegal Activities**

3             Kinde Durkee formed Durkee & Associates ("D&A") in 2000 to provide accounting and  
4     reporting services to political campaigns. For more than a decade, Durkee served as the  
5     acknowledged "go-to" treasurer and accountant for Democratic political committees in  
6     California at the federal and state levels.<sup>4</sup> Before her arrest on September 2, 2011, Durkee  
7     served as treasurer or assistant treasurer for hundreds of state and federal political committees  
8     and non-profit organizations, prepared and filed their disclosure reports, and exercised control  
9     over their bank accounts.

10            On March 27, 2012, the United States Attorney for the Eastern District of California filed  
11     a criminal Information charging Durkee with "routinely misappropriate[ing] client funds by  
12     moving without authorization substantial sums of money out of client accounts, including  
13     political campaign accounts, into Durkee & Associates' or into other clients' accounts," and  
14     submitting false disclosure reports to the California Secretary of State, the Senate Office of  
15     Public Records, and the Commission.<sup>5</sup> On March 30, 2012, Durkee pleaded guilty to five counts  
16     of mail fraud, admitting that she caused in excess of \$7 million in losses to more than 10 and  
17     possibly 50 or more of her clients, beginning as early as January 2000 and continuing through  
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<sup>4</sup> Adam Nagourney, *A 'Go To' Accountant is Accused of Fraud*, N.Y. TIMES, Sept. 14, 2011, at A18 [hereinafter Nagourney, 'Go To' Accountant], [www.nytimes.com/2011/09/14/us/kinde-durkee-campaign-accountant-is-accused-of-fraud.html](http://www.nytimes.com/2011/09/14/us/kinde-durkee-campaign-accountant-is-accused-of-fraud.html).

<sup>5</sup> See Information, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Mar. 27, 2012) ("Information").

1 early September 2011.<sup>6</sup> On November 28, 2012, the district court sentenced Durkee to a 97-  
2 month term of imprisonment and ordered her to pay \$10.5 million in restitution.<sup>7</sup> Her jail  
3 sentence was scheduled to begin on January 2, 2013.<sup>8</sup>

4 In addition to serving as treasurer or assistant treasurer herself, pleadings filed in the  
5 criminal matter show that D&A provided numerous political committees accounting and  
6 campaign reporting services, including: (1) maintaining and acting as the committees' custodian  
7 for their financial records; (2) tracking the committees' receipts and disbursements; (3) filing  
8 disclosure reports with the Commission and other state agencies, often in the capacity as  
9 treasurer of the committee; and (4) maintaining the committees' bank accounts. Over the years,  
10 Durkee obtained signature authority on more than 700 client bank accounts.<sup>9</sup> In most cases, her  
11 clients did not have signatory authority on the accounts.

12 During the course of her scheme, Durkee transferred funds from client accounts into  
13 D&A accounts and paid expenses with those funds, including personal mortgage payments,  
14 personal credit card payments, D&A expenses, and repayments to accounts from which she had

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<sup>6</sup> Plea Agreement, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Mar. 30, 2012) ("Plea Agreement").

<sup>7</sup> See Judgment, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Nov. 28, 2012); *Ex-Campaign Treasurer Kinde Durkee Sentenced to 8 Years in Prison*, L.A. TIMES, Nov. 28, 2012, <http://latimesblogs.latimes.com/california-politics/2012/11/campaign-treasurer-kinde-durkee-sentenced-to-8-years-prison-7-million-theft.html>.

<sup>8</sup> See Juliet Williams, *Kinde Durkee, Treasurer Who Defrauded Feinstein, Other Clients, Faces Sentencing*, HUFFINGTON POST, Nov. 28, 2012, [http://www.huffingtonpost.com/2012/11/28/kinde-durkee\\_n\\_2206964.html](http://www.huffingtonpost.com/2012/11/28/kinde-durkee_n_2206964.html).

<sup>9</sup> See Plea Agreement, *supra*, Ex. A ¶¶ 5, 8; *William Wardlaw for Feinstein for Senate v. First Cal. Bank.*, Civ. No. SC114232, ¶ 28 (Cal. Super. Ct.) ("Feinstein Lawsuit").

1 made unauthorized withdrawals.<sup>11</sup> Durkee reportedly “used money she siphoned from campaign  
2 committees to pay for her mortgage, her American Express bill, entertainment costs—including  
3 money paid to Amazon.com and Baskin-Robbins—and the monthly charge for caring for her  
4 mother at a Belmont Village assisted-care facility.”<sup>12</sup> Durkee’s response to the U.S. Probation  
5 Office’s Presentence Report addresses the large amount of misappropriated funds as follows:

6 Over the course of several years, Ms. Durkee misappropriated millions of  
7 dollars in client funds over which she had control as the owner of Durkee and  
8 Associates. Although Ms. Durkee did not use those funds to furnish a lavish  
9 lifestyle, she admittedly did use a significant amount of money for personal  
10 expenses, such as food, clothing, mortgage payments, and her parents’  
11 assisted living care. However, as the Probation Officer recognized, most of  
12 the funds appear to have been used to keep the business running. Although  
13 Ms. Durkee intended to repay the funds, it quickly spiraled out of control and  
14 reached a level she will not be able to repay during her lifetime.<sup>13</sup>  
15

16 The available information indicates that Durkee used the D&A accounts for both business  
17 and personal expenses, that Durkee deposited personal funds in her business accounts, and rarely  
18 used her personal bank accounts. Based on publicly available information and our discussions  
19 with law enforcement personnel, it appears that Durkee engaged in thousands of transactions,  
20 regularly moving money among her client accounts, at times on a daily basis, without  
21 maintaining records of those transfers. Accordingly, a full forensic audit of the activity would

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<sup>11</sup> See Plea Agreement, *supra*, Ex. A ¶¶ 13, 15.

<sup>12</sup> Nagourney, ‘Go To’ Accountant, *supra*.

<sup>13</sup> Defendant’s Response to Presentence Report and Sentencing Memorandum, at 10-11, *United States v. Kinde Durkee*, 12-cr-00123 (E.D. Cal. Oct. 24, 2012) (footnote and internal citation omitted).

1 require extraordinary Commission resources, and ultimately it may be impossible to identify  
2 with confidence all of the funds converted or otherwise misappropriated through her scheme.

3 Durkee did not include her unauthorized transfers in the disclosure reports she filed on  
4 behalf of her client committees or in the financial summaries she provided her clients. It  
5 appears that most of Durkee's clients did not have access to their own bank accounts, never  
6 requested their bank records from Durkee, D&A, or their banks, and never sought to reconcile  
7 their disclosure reports against the bank records.

8 After Durkee's arrest, many of the committees that had retained Durkee and her firm  
9 were unable to access their records from First California Bank, where most of the committees'  
10 financial accounts were maintained. The bank had frozen those accounts as part of an  
11 interpleader action that the bank filed to resolve the uncertainty caused by Durkee's prolific  
12 unauthorized transfers among the various committees' accounts.<sup>18</sup> The bank alleged that the  
13 funds in the defendants' accounts were so commingled as a result of Durkee's transfers that the

<sup>18</sup> See Verified Complaint-In-Interpleader, *First Cal. Bank v. 68th AD Democratic PAC*, No. BC470182, at 25 (Cal. Super. Ct. Sept. 23, 2011) (naming as defendants those entities that had deposit accounts identifying Durkee or a D&A representative as an authorized signatory).

1 bank could not determine what amounts each entity was due.<sup>19</sup> The bank sought an order  
2 requiring the defendant committees to interplead and litigate their respective claims to the  
3 aggregate amount of \$2,539,049.27 held in all the accounts.<sup>20</sup> After Durkee's arrest, the  
4 Committees also filed civil lawsuits in California state court against, among others, Durkee, her  
5 husband and business partner John Forgy, D&A, and First California Bank.<sup>21</sup> The lawsuits and  
6 the interpleader action remain ongoing.

7 **B. Durkee's Work for the Committees**

8 Durkee provided accounting, compliance, and campaign reporting services to hundreds of  
9 federal and state committees through D&A, including the Committees discussed in detail here.  
10 Four of the Committees were among D&A's largest federal political committee clients.<sup>22</sup>  
11 Durkee served as treasurer of the Feinstein and Loretta Sanchez Committees for 19 years and 15  
12 years, respectively, including during the period before she formed D&A in 2000. Durkee served  
13 as treasurer of the Linda Sanchez Committee and its predecessor committee for about ten years,  
14 the Fund for a Majority for four years, and the Susan Davis Committee for about three years.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 25-27. A Superior Court judge in California recently ordered the funds to be distributed to the owners. See *\$2.5 Million Frozen in Kinde Durkee Case Released to Politicians, Charities*, L.A. TIMES, Nov. 27, 2012, <http://latimesblogs.latimes.com/california-politics/2012/11/kinde-durkee-case-funds-released.html>.

<sup>21</sup> The Feinstein Committee and Fund for the Majority filed their lawsuit on September 23, 2011, even before amending their disclosure reports. That action named Matthew Lemcke, a D&A employee, as a defendant. Feinstein Lawsuit at 1. The Davis and Loretta and Linda Sanchez Committees filed suit on February 29, 2012. *Committee to Re-Elect Loretta Sanchez v. First Cal. Bank*, Civ. No. BC479873, at 1 (Cal. Super. Ct. Feb. 29, 2012) ("Davis/Sanchezes Lawsuit").

<sup>22</sup> Feinstein, Linda and Loretta Sanchez, and Susan Davis Committees were among the largest of the 150 clients he handled as an account executive.

These Committees also sustained some of the largest losses of D&A's federal political committee clients according to the Judgment and restitution order entered against Durkee in the criminal matter. See Judgment, *supra*, Restitution Addendum.

1 Through her firm, Durkee had control of all aspects of the Committees' finances.  
2 Durkee and D&A opened and maintained the Committees' bank accounts, deposited receipts and  
3 made disbursements from the accounts, tracked those transfers, and filed all required  
4 Commission reports on behalf of the Committees.<sup>23</sup> Durkee, alone or in combination with other  
5 D&A employees, also had signature authority on the accounts.<sup>24</sup> Although Durkee opened the  
6 bank accounts in the Committees' names, the Committees did not receive copies of their bank  
7 statements.<sup>25</sup>

8 D&A provided periodic financial reports to each of the Committees that varied in  
9 frequency and detail. These "Balance Sheets," "Balance Summar[ies]," and "Profit and Loss  
10 Statements" purportedly "detailed the receipts, expenditures, and balances" of each of the  
11 Committees' accounts.<sup>26</sup> According to the Committees, Durkee's weekly reports showed  
12 receipts and disbursements that were consistent with their own internal records of receipts and  
13 disbursements.<sup>27</sup> Only after Durkee's September 2, 2011, arrest did the Committees discover  
14 her unauthorized transfers, fraud, and misrepresentations concerning the Committee funds under  
15 her control.

<sup>23</sup> Compl. at 1; Plea Agreement, *supra*, Ex. A ¶¶ 5-8; Feinstein Lawsuit ¶¶ 28, 31, 33-34; Davis/Sanchez Lawsuit ¶¶ 31, 33, 35-36;

<sup>24</sup> Plea Agreement, *supra*, Ex. A ¶ 8.

<sup>25</sup>

Lemcke served as an account representative for each of the Committees.

<sup>26</sup> Compl. at 1; Feinstein Lawsuit ¶¶ 35, 43, 48; Davis/Sanchez Lawsuit ¶¶ 35, 37, 59.

<sup>27</sup> Compl. at 2; Feinstein Lawsuit ¶ 35; Davis/Sanchez Lawsuit ¶ 37.

1           The Plea Agreement includes specific examples of Durkee's unauthorized transactions  
2 involving the Committees' accounts and funds. It identifies numerous instances where Durkee  
3 (1) issued checks from the Committees' accounts, deposited them into the D&A accounts, and  
4 used those funds, almost immediately, to pay personal and business expenses, or (2) issued  
5 checks from D&A accounts to the Committees using funds funneled from the accounts of a state  
6 candidate committee's accounts that Durkee also controlled, apparently to conceal her  
7 misappropriation and cover necessary expenses of the Committees. Durkee further failed to  
8 disclose each of those unauthorized transactions in the disclosure reports she filed with the  
9 Commission on behalf of the Committees. The following four tables each describe the  
10 transactions as to each of the Committees that Durkee conceded in the Plea Agreement she  
11 engaged in without authorization:

**TABLE 1—FEINSTEIN COMMITTEE<sup>28</sup>**

DATE	TRANSACTION	PURPOSE
3/2/2010	Three checks totaling \$18,000 issued from Feinstein account and deposited into D&A account.	Funds used for payment of personal mortgage, Sprint, and payroll.
4/20/2010	Check in amount of \$15,000 issued from Feinstein account and deposited into D&A account; check of the same amount issued from Loretta Sanchez account on same date and deposited into D&A account	Funds used for payment of credit card, nursing home fees, employee payments, and bank fees.
5/6/2010	Two checks of \$20,000 each issued on Feinstein account and deposited into D&A account.	Funds used for payment of mortgage, health insurance, self-storage, payroll, and bank fees.
June 2010	\$25,000 transferred from Feinstein account to account of state candidate committee (recital is unclear whether transfer was directed through a D&A account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the California Fair Political Practices Commission ("FPCC") in connection with her filings for the state committee.
6/10/2010	Three checks of \$10,000 each issued from Feinstein, Loretta Sanchez, and Linda Sanchez accounts, and deposited into D&A account.	Funds used for payment to American Express, personal loan payment, payment to Kaiser, and bank fees.
7/7/2010	Two checks totaling \$23,000 issued from Feinstein account and deposited into D&A account.	Funds used for payment of American Express bill, which included charges for baseball tickets, Disneyland and Trader Joe's.
7/19/2010	Three checks of \$25,000 each issued from Feinstein account and deposited into D&A account.	Funds used for payment of mortgage on D&A office building, credit card, and payroll.

<sup>28</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 25-32, 39-40, 52-53. The Plea Agreement also references a \$25,000 transaction from the Feinstein Committee's account into the account of state candidate Lou Correa but does not provide any additional details concerning that transaction. *Id.*, Ex. A ¶ 59. Because it is unclear whether this transaction is different from any of the \$25,000 transactions also discussed in the Plea Agreement, we have not included it in Table 1. The Plea Agreement does not include any transactions specifically relating to the Fund for the Majority.



**TABLE 2—LORETTA SANCHEZ COMMITTEE<sup>29</sup>**

DATE	TRANSACTION	PURPOSE
3/5/2010	\$10,000 check issued from Loretta Sanchez Committee account deposited into D&A account.	Covered a payment of \$7,476 to Anthem Blue Cross.
4/20/2010	\$15,000 check issued from Loretta Sanchez Committee deposited into D&A account.	Combined with funds from another federal committee, covered checks to Chase Card Services, nursing home fees, checks to D&A staff, and \$750 in bank fees for non-sufficient funds ("NSF") checks.
June 2010	\$30,000 transferred from Loretta Sanchez Committee to account of state candidate committee (unclear if transferred through D&A Account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the FPCC in connection with her filings for the state committee.
6/10/2010	\$10,000 check issued from Loretta Sanchez Committee deposited into D&A account.	Combined with funds from two other federal committees, covered a \$25,000 payment to American Express, a \$1,286 loan on Durkee's residence, a payment to Kaiser Foundation Health, and \$600 in bank fees for NSF checks.
10/1/2010 (approx.)	\$125,000 check to Loretta Sanchez Committee drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Loretta Sanchez Committee.
10/8/2010 (approx.)	\$45,000 check to Loretta Sanchez Committee drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Loretta Sanchez Committee.

<sup>29</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 36-37, 39-40, 52-53, 64-65, 68-69.

**TABLE 3—LINDA SANCHEZ COMMITTEE<sup>30</sup>**

DATE	TRANSACTION	PURPOSE
June 2010	\$15,000 transferred from Linda Sanchez Committee to repay account of state candidate committee (unclear if transferred through D&A account).	Repay funds embezzled from state candidate committee account while Durkee was aware she was under investigation by the FPCC in connection with her filings for the state committee.
6/10/2010	\$10,000 check issued from Linda Sanchez Committee account deposited into D&A account.	Combined with funds from two other federal committees, covered \$25,000 payment to American express, a \$2,855.72 loan on Durkee residence, payment to Kaiser Foundation Health and \$600 in bank fees for NSF checks.
9/29/2010 (approx.)	\$30,000 check to Linda Sanchez Committee account drawn on D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Linda Sanchez Committee.

**TABLE 4 – DAVIS COMMITTEE<sup>31</sup>**

DATE	TRANSACTION	PURPOSE
9/29/2010 (approx.)	\$72,000 check to Susan Davis for Congress drawn on a D&A account using funds funneled from state candidate committee account.	Needed to cover expenses of Davis Committee.
3/17/2011 (approx.)	\$1,000 check to Susan Davis for Congress drawn on D&A account using funds funneled from a non-profit organization.	Needed to cover expenses of Davis Committee.

<sup>30</sup> Plea Agreement, *supra*, Ex. A ¶¶ 19, 52-53, 58-59.

<sup>31</sup> Plea Agreement, *supra*, Ex. A ¶¶ 47-48, 58-59.

1 In addition, as a result of the Committees' review of their bank statements following  
2 Durkee's arrest, the Committees discovered multiple transfers between accounts that Durkee  
3 made "for the purpose of artificially inflating the balance" of the Committees' accounts in an  
4 attempt to hide her embezzlement.<sup>32</sup> The bank statements also revealed that, to conceal her theft,  
5 Durkee deliberately provided false account balances both in her regular reports to the  
6 Committees as well as in the disclosure reports she filed on behalf of the Committees with the  
7 Commission.<sup>33</sup> For instance, a report to the Feinstein Committee from Durkee dated August 4,  
8 2011, claimed that the Feinstein Committee had a balance of \$2,455,076.83 in its accounts as of  
9 July 30, 2011, when that balance was actually \$356,250.47.<sup>34</sup> Similarly, other Committees'  
10 disclosure reports and bank statements identify widely divergent amounts in the Committees'  
11 accounts: the Loretta Sanchez Committee's 2010 July Quarterly Report shows an ending cash on  
12 hand balance of \$1,267,685.30, while its bank statements showed a balance on June 30, 2010, of  
13 only \$64,468.20; the Linda Sanchez Committee's 2010 Year-End Report reflects an ending cash  
14 on hand balance of \$172,299.58, while its bank statements for the same period showed a balance  
15 of \$5,682.88; and the Davis Committee's 2010 October Quarterly Report shows an ending cash  
16 on hand balance of \$534,971.99, while its bank statements for the same period showed a balance  
17 of \$29,009.87.<sup>35</sup> Durkee also frequently overdrew the bank accounts: in the course of one year,

<sup>32</sup> Feinstein Lawsuit ¶¶ 74, 76; Davis/Sanchezes Lawsuit ¶¶ 85-87.

<sup>33</sup> See Davis/Sanchezes Lawsuit, ¶¶ 42, 49, 117.

<sup>34</sup> Feinstein Lawsuit ¶¶ 46-47.

<sup>35</sup> Davis/Sanchezes Lawsuit, ¶¶ 44, 52, 55, 117.

for example, she overdrew the Feinstein Committee's account 68 times, incurring overdraft fees.<sup>36</sup>

**III. THERE IS REASON TO BELIEVE DURKEE KNOWINGLY AND WILLFULLY VIOLATED NUMEROUS PROVISIONS OF THE ACT**

The Feinstein Committee's treasurer filed a Complaint against Durkee alleging knowing and willful violations of the reporting, commingling, and personal use provisions of the Act.<sup>37</sup> OGC notified Durkee that it had received the Complaint as well as the internally generated matters involving the *Sua Sponte* Submissions and the 53 referrals that OGC received from RAD, including those relating to each of the Committees.<sup>38</sup> Durkee did not respond to any of the notifications.

Under the Act, a committee, through its treasurer, is required to keep an accurate account of and disclose its receipts, disbursements, and cash-on-hand balances.<sup>39</sup> The Act's recordkeeping obligations include keeping an account of the name and address of every person to whom a disbursement is made, together with the date, amount, and purpose of the disbursement, and keeping a receipt, invoice, or cancelled check for disbursements in excess of \$200.<sup>40</sup> Committees are required to file reports with the Commission through their treasurers disclosing, among other things, the amount of cash-on-hand at the beginning of the reporting period and the total amount of disbursements, including the name and address of each person to whom an

<sup>36</sup> Feinstein Lawsuit ¶¶ 80-81.

<sup>37</sup> See Compl., MUR 6597 (Kinde Durkee).

<sup>38</sup> See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009). The RAD referrals address violations of 2 U.S.C. §§ 432(b) and (c), 434(b); 11 C.F.R. §§ 102.9, 102.15, 104.3.

<sup>39</sup> See 2 U.S.C. §§ 432(c), 434(b); 11 C.F.R. §§ 104.3, 104.14(d).

<sup>40</sup> 2 U.S.C. § 432(c)(5), (d); 11 C.F.R. § 102.9(a), (b)(2).

1 expenditure exceeding \$200 is made together with the date, amount, and purpose of the  
2 expenditure.<sup>41</sup>

3 The Act and Commission regulations further require that all funds of a political  
4 committee must be "segregated from, and may not be commingled with, the personal funds of  
5 any individual,"<sup>42</sup> and prohibit any person from converting contributions to a federal candidate  
6 for personal use.<sup>43</sup> "Personal use" means any use of funds in a campaign account of a federal  
7 candidate to fulfill a commitment, obligation, or expense of any person that would exist  
8 irrespective of the candidate's campaign duties.<sup>44</sup> The Act and Commission regulations set forth  
9 some *per se* examples of personal use, including mortgage payments, tuition payments, non-  
10 campaign-related automobile expenses, and health club dues, among others.<sup>45</sup>

11 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*  
12 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his or her  
13 personal capacity when it appears that he or she, while serving as treasurer, may have violated  
14 obligations imposed by the Act or regulations and where the violation was knowing and  
15 willful.<sup>46</sup> A knowing and willful violation of the Act indicates that "acts were committed with  
16 full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>47</sup>

<sup>41</sup> See 2 U.S.C. § 434(b)(1), (2), (4)(G), (5), (6)(A).

<sup>42</sup> *Id.* § 432(b)(3); 11 C.F.R. § 102.15.

<sup>43</sup> 2 U.S.C. § 439a(b)(1).

<sup>44</sup> See 2 U.S.C. § 439a(b)(2).

<sup>45</sup> See 2 U.S.C. § 439a(b)(2)(A)-(I); see also 11 C.F.R. § 113.1(g)(1)(i).

<sup>46</sup> 70 Fed. Reg. 3, 5 (Jan. 3, 2005). See MUR 6475 (Andrew McCrosson); MUR 6179 (Christopher Ward); MUR 5971 (Jennifer Adams); MUR 5721/5772 (Kenneth Phelps); MUR 5610 (Earl Allen Haywood).

<sup>47</sup> 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

1 Such a violation may be established "by proof that the defendant acted deliberately and with  
2 knowledge" that an action was unlawful.<sup>48</sup>

3 Through her guilty plea, Durkee has admitted to embezzling campaign funds and to  
4 disguising her scheme by filing false disclosure reports with the Commission. For over ten  
5 years, in her capacity as treasurer of the Committees Durkee made unauthorized transfers of  
6 funds from the Committees' bank accounts into D&A bank accounts that contained both  
7 business and personal funds of Durkee; she thereby also commingled the Committees' funds  
8 with personal funds. Durkee further used those funds to pay for personal expenses, including  
9 personal mortgage and credit card payments.

10 Durkee also created false records in the form of financial reports she provided to the  
11 Committees to hide her activities. She then failed to disclose any of these unauthorized transfers  
12 in the Committees' reports that she filed with the Commission. Her efforts to conceal the  
13 unauthorized transfers demonstrate that she knew her actions were unauthorized and illegal. In  
14 the Plea Agreement, Durkee admits that she "did devise and intend to devise and participate in a  
15 material scheme and artifice to defraud clients of Durkee & Associates," and that "[t]hroughout  
16 the existence of the scheme, [she] acted with the intent to defraud."<sup>49</sup> The agreement also states  
17 that Durkee "understood that part of the scheme included submitting false information to . . . the  
18 Federal Election Commission," and that the false reports filed with the Commission were  
19 "instrumental to the success of the scheme because they served to hide [her] activity and prevent  
20 its discovery."<sup>50</sup>

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<sup>48</sup> *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

<sup>49</sup> Plea Agreement, *supra*, Ex. A ¶ 12.

<sup>50</sup> *Id.*, Ex. A ¶¶ 14, 81.

1 According to disclosure reports and information in the Committees' *Sua Sponte*  
2 Submissions based on available financial records, Durkee filed disclosure reports on behalf of  
3 the Committees that failed to disclose substantial amounts of activity:<sup>51</sup> (1) the Feinstein  
4 Committee failed to disclose unauthorized disbursements and receipts totaling \$4,645,386.12 and  
5 \$100,000, respectively;<sup>52</sup> (2) the Fund for the Majority (Sen. Feinstein's leadership PAC) failed  
6 to disclose unauthorized disbursements and receipts totaling \$25,000 and \$1,874.10,  
7 respectively;<sup>53</sup> (3) the Davis Committee failed to disclose unauthorized disbursements and  
8 unauthorized receipts totaling approximately \$641,000 and \$483,480, respectively; (4) the  
9 Linda Sanchez Committee failed to disclose unauthorized disbursements totaling approximately  
10 \$887,700 and over-reported or under-reported receipts in each disclosure report filed between  
11 January 1, 2007 and September 30, 2011; and (5) the Loretta Sanchez Committee failed to  
12 disclose unauthorized disbursements totaling approximately \$1,826,293 and over-reported or  
13 under-reported receipts in each disclosure report filed between January 1, 2007 and  
14 September 30, 2011.

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<sup>51</sup> The available financial records obtained by each of the Committees covered varying time periods.

<sup>52</sup> See Feinstein for Senate, Amended 2011 October Quarterly Report at 3-4 (Dec. 27, 2011).

<sup>53</sup> See Fund for the Majority, 2011 Year-End Report at 3-4 (Jan. 31, 2012).

Accordingly, we recommend that the Commission open a MUR as to Durkee in Pre-MURs 534, 537, 538, and 539, and RRs 12L-18, 12L-28, 12L-29, 12L-30, and 12L-43, merge that new MUR into MUR 6597, and find reason to believe that Kinde Durkee knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), and 439a(b) by commingling committee funds with personal funds, failing to keep accurate records of committee funds, filing inaccurate reports with the Commission, and converting campaign funds to her personal use. In light of the completed criminal investigation and the Plea Agreement making admissions concerning the course of conduct that violated the Act,

Therefore, we also recommend that the Commission enter into pre-probable cause conciliation with Durkee and approve the attached conciliation agreement.<sup>58</sup>

We note that D&A was also identified as a Respondent in MUR 6597 and provided notice of the Complaint and an opportunity to respond. The Act and Commission regulations impose liability only on a committee's treasurer (or in some cases, an assistant treasurer) for failing to file accurate disclosure reports. 2 U.S.C. §§ 434(a)-(b), 432(c); 11 C.F.R. §§ 104.1, 102.7, 102.9, 104.14. Because Durkee was the Committees' named treasurer and carried out the Committees' financial transactions, D&A does not appear to be liable under the Act. Therefore, we recommend that the Commission take no action as to D&A and close the file as to it.



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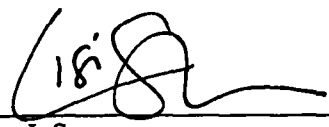
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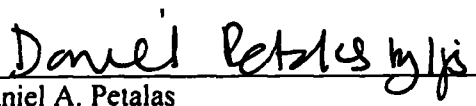
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V. RECOMMENDATIONS

1. Open a MUR as to Kinde Durkee in Pre-MURs 534, 537, 538, 539, and RR 12L-18, 12L-28, 12L-29, 12L-30, and 12L-43, and merge the newly opened MUR into MUR 6597;
2. Find reason to believe that Kinde Durkee knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), 432(c), 434(b), 439a(b);
3. Enter into pre-probable cause conciliation with Kinde Durkee prior to a finding of probable cause to believe;
4. Take no action and close the file as to Durkee and Associates, LLC.
5. Approve the attached Factual and Legal Analysis;
7. Approve the appropriate letters.

11/25/13  
Date

  
Lisa J. Stevenson  
Deputy General Counsel - Law

  
Daniel A. Petalas  
Associate General Counsel for Enforcement

  
Susan L. Lebeaux  
Assistant General Counsel

MUR 6597, Pre-MURs 534, 537, 538, and 539,  
and RAD Referrals 12L-18, 28, 29, 30, and 43 (Kinde Durkee)  
First General Counsel's Report  
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